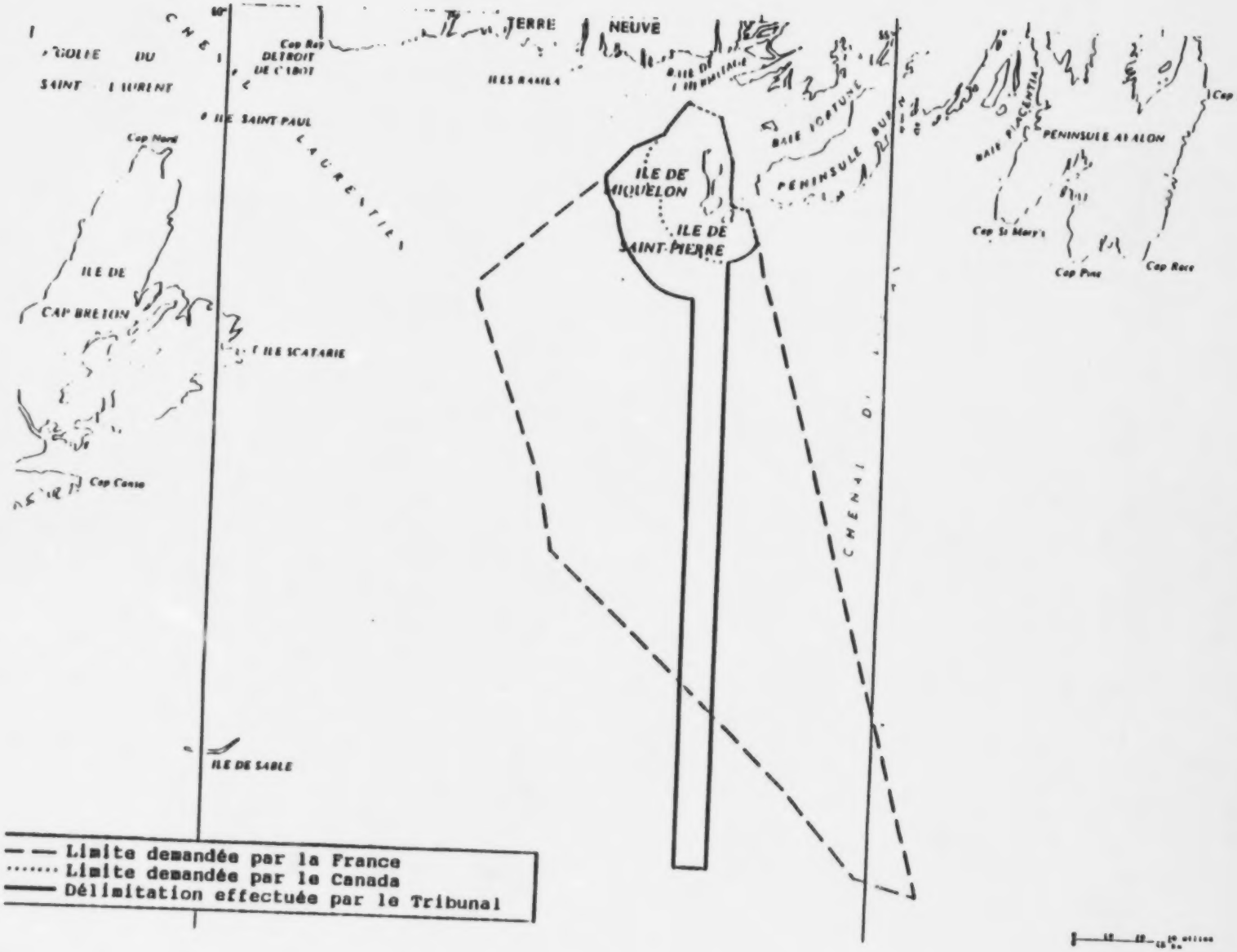
The distance between the meridians passing through F3 and FE at the mean latitude is 19,502.5 metres, so that any point on the western or eastern limits must lie approximately 9,751.25 metres west or east respectively of the central meridian of 56° 16' 39."4 West.

9. The limits described by the Court for this sector are "small circles" and are neither geodetic lines nor rhumb lines. A geodetic line is the closer approximation, but because positions have been given to 0.1 arc seconds it has been necessary to determine two intermediate points along each limit in order to reduce the divergence of the geodesics from the small circles to a value commensurate with the degree of precision being quoted. These are points K, L, O and P.

10. The line of delimitation has been illustrated on copies of Canadian chart 4490, which although no longer published was selected as the largest-scale chart embracing the area. The turning points of the line have been plotted by their geographical coordinates on NAD (83) as given in the Decision, but because of Datum differences on the chart the first five points (9 to D) appear to lie further from the coast of Newfoundland than is actually the case.

P. B. BEAZLEY


ILE DE MIQUELON
ILE DE SAINT-PIERRE
ILE DE CAP BRETON
ILE SAINT PAUL
ILE SCATARIE
ILE DE SABLE
Cap Nord
Cap Canso
Cap Ray
Cap Race
Cap Spear
Cap Pine
Cap St Mary's
PENINSULE AVALON
BAIE PLACENTIA
BAIE FORTUNE
PENINSULE BURIN
CHENAL D'
Limite demandée par la France
Limite demandée par le Canada
Délimitation effectuée par le Tribunal

B. Judgment rendered on 11 September 1992 on the case concerning the land, island and maritime frontier dispute (El Salvador/Honduras; Nicaragua intervening) 1/

THE HAGUE, 11 September (ICJ) -- The Chamber constituted by the International Court of Justice to deal with the land, island and maritime frontier dispute between El Salvador and Honduras, today delivered its Judgment. Nicaragua was an intervenor in the case.

The Chamber decided on the land boundary between Honduras and El Salvador in six disputed sectors, the legal situation of three islands in the Gulf of Fonseca and the maritime spaces within that gulf.

The Chamber based its determination in the land question on principle, generally accepted in Spanish America, that international boundaries should follow former colonial administrative boundaries. The Chamber was authorized to take into account, where pertinent, a provision of the 1980 Peace Treaty that a basis for delimitation is to be found in documents issued by Spanish authorities during the colonial period indicating jurisdictions or territorial limits, as well as other types of evidence.

With regard to the land boundary, the Chamber notes that while the Parties have indicated to which colonial administrative divisions they claim to have succeeded, they have not been able to produce legislative or similar material indicating the limits of such divisions. They have submitted titles concerning land grants by the Spanish Crown, in particular grants of commons to Indian communities, from which, they allege, the provincial boundaries can be deduced.

El Salvador maintains that if a formal grant of commons to a community in one province extended to land situated in another, the administrative control of the former province was the basis for determining the current boundary. The Chamber, faced with such a situation in three of the disputed sectors, has been able to resolve the issue without determining this particular question of Spanish colonial law.

The Chamber recognizes that grants to private individuals may afford evidence as to the location of boundaries, and will consider the evidence of such grants on its merits, but without treating them as necessarily conclusive.

The Chamber notes the agreement of the parties that land not attributed by the Spanish Crown became part of one or the other State depending on its location, and that land grants made after the independence of the two States may provide evidence of the position in 1821.

Land frontier

Proceeding from west to east, the Chamber deals successively with each of the six disputed sectors of the land boundary:

In the first sector, the Chamber considers a claim by El Salvador based on a land grant by colonial authorities to a community in a province that on independence became part of El Salvador. Honduras contends that when the title was granted, the lands concerned were stated to be in a Honduran province, and that the lands on independence thus became part of Honduras.

1/ United Nations press release, ICJ/519 of 11 September 1992.

The Chamber upholds El Salvador's claim on the basis that Honduras's conduct from 1821 to 1972 may be regarded as acquiescence. It has then to determine the location of the boundary of the granted land.

Turning to a disputed area outside the grant, claimed by Honduras on the basis that it was Crown land situated in a province that became Honduran and by El Salvador on the basis of effective control, the Chamber adopts a topographically suitable boundary line that had been accepted by El Salvador in the 1930s.

In the second sector, the Chamber upholds a claim by Honduras that a 1742 title shows that the "mountain of Cayaguanca", which a community in a province that became Honduran was allowed to cultivate, is now part of Honduras. The location and extent of that mountain was not specified; according to Honduras, it extended over the whole of the disputed area. The Chamber examines the Parties' conflicting interpretations of an 1833 Salvadorian title, and on that basis determines the course of the relevant portion of the boundary line. The Chamber fixes the remainder of the boundary according to other evidence, including an interpretation of the 1742 title.

In the third sector, the Chamber deals with claims based on various colonial and post-colonial titles, including interlocking ones, as well as claims made particularly by El Salvador based on other arguments. Unable to reconcile all of the eighteenth century data, the Chamber reconstructs the boundary on the basis of identifiable reference points.

In the fourth sector, the principal issue is whether the boundary follows the river Negro-Quiagara, as argued by Honduras, or a line farther north, as El Salvador contends. The disagreement centres on a land grant, straddling the river, to an Indian community in a province that became Salvadorian and a dispute with a community in a province that became Honduran. The Chamber upholds Honduras's contention that El Salvador admitted in 1861 that the river was the boundary.

In other parts of this sector, the Chamber determines the boundary on the basis of an interpretation of the various colonial titles produced by each party and a Salvadorian claim relating to the concept of Crown land. The Chamber has to determine the end-point of an agreed sector of the boundary.

In the fifth sector, El Salvador claims that the boundary follows the northern limit of lands covered in a 1760 title, while Honduras claims that the northern part of those lands had belonged, prior to 1734, to a village in Comayagua Province, now a part of Honduras. The Chamber does not accept Honduras's claim, and further rejects that Party's contention that El Salvador had, by its conduct between 1821 and 1897, accepted the river Torola as the boundary.

The Chamber determines the boundary on the basis of an interpretation of the 1760 title different from those of the Parties. In the east, the Chamber sets the line at the river Unire, as claimed by El Salvador, and between the 1760 lands and the starting point of the sector, at the Torola river.

In the sixth sector, the essential question is whether the colonial boundary was formed by the present river Goascoran, or, as claimed by El Salvador, by a former course of that river. The Chamber does not accept the claim that the riverbed changed its location since the independence of the two States in 1821. The main basis for this finding is a map of the Gulf of Fonseca during the period 1794-1796, and the conduct of the Parties in the negotiations of 1880 and 1884.

Gulf islands

Concerning the status of the islands in the Gulf, El Salvador has asked the Chamber to declare that country's sovereignty over all of them except Zacata Grande and the Farallones. According to Honduras, only Meanguera and Meanguerita islands are in dispute, and Honduras claims sovereignty over them. The Chamber states that a judicial determination is required only for the islands in dispute, which it finds to be El Tigre, Meanguera and Meanguerita; it rejects Honduras's claim that there is no real dispute as to El Tigre.

In view of the fragmentary and ambiguous nature of the material offered in evidence by the Parties, the Chamber deems it unnecessary to analyse all the arguments in detail. Noting that in theory each island appertained to one of the Gulf States by succession from Spain, which precluded acquisition by occupation, the Chamber observes that effective possession by one of the States could throw light on the present legal situation.

Since Honduras has occupied El Tigre since 1849, the Chamber concludes that the Parties' conduct accorded with the assumption that El Tigre belongs to that country, even though Honduras has not requested such a finding.

It finds that Meanguerita, a very small uninhabited island, is a "dependency" of nearby Meanguera. Noting that El Salvador has intensified its presence in Meanguera since it claimed the island in 1854, the Chamber rules that Honduras's 1991 protest is too late to affect the presumption of its acquiescence to the island's legal status. The Chamber finds that Meanguera and Meanguerita belong to El Salvador.

Maritime boundary

As for the maritime frontier, El Salvador claims that the spaces within the Gulf of Fonseca are subject to a condominium of the three coastal States and that delimitation would be inappropriate. Honduras argues that within the Gulf there is a community of interests necessitating a judicial delimitation.

Applying the normal rules of treaty interpretation, the Chamber finds that it has no jurisdiction to effect a delimitation, whether inside or outside the Gulf. After examining the history of the Gulf, the Chamber notes that El Salvador, Honduras and Nicaragua continue to claim the Gulf as an historic bay with the character of a closed sea. It finds that the Gulf waters, other than the three-mile maritime belt, are historic waters and subject to a joint sovereignty of the three coastal States. It notes that there has been no attempt to divide the waters according to colonial title and decides that a joint succession of the three States seems to be logical.

The Chamber finds that Honduras has legal rights in the Gulf waters up to the bay closing line. Outside the Gulf, the Chamber observes that new concepts of law -- particularly regarding the continental shelf and the exclusive economic zone -- are now involved, and finds that, excluding a strip at each end of the Gulf corresponding to the maritime belts of El Salvador and Nicaragua, the three States are entitled to territorial sea, continental shelf and exclusive economic zone, but may proceed to a division by mutual agreement.

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua intervening) 1/

The following information is communicated to the press by the Registry of the International Court of Justice:

Today, 11 September 1992, the Chamber constituted by the International Court of Justice in the case concerning the Land, Island and Maritime Frontier Dispute between El Salvador and Honduras, Nicaragua intervening, delivered its Judgment. The Chamber first adopted the course of the boundary line in the disputed land sections between El Salvador and Honduras. It then ruled on the legal situation of the maritime spaces within and outside the closing line of that Gulf.

The Chamber was composed as follows: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Vice-President Oda; Judges ad hoc Valticos, Torres Bernárdez.

A summary of the Judgment and of the declaration and opinions appended to it is attached. This summary, prepared by the Registry for the use of the press, in no way involves the responsibility of the Chamber. It cannot be quoted against the text of the Judgment, of which it does not constitute an interpretation. It is illustrated by six sketch-maps 2/ showing, in respect of the disputed sectors of the land boundary, the claims of the Parties and the boundary as found by the Chamber, together with a map showing the whole frontier with a key to the position of the sketch-maps, and a map of the Gulf of Fonseca. These sketch-maps have been prepared purely for illustrative purposes, and have no official status. The operative part of the Chamber's Judgment, set out below, defines the land boundary sectors by reference to turning points identified by letters; those are not reproduced on the attached sketch-maps. Copies of the 1:50,000 scale maps attached to the Judgment, indicating the line and the lettered points, are available for inspection in the Registry.

...

X. Legal situation of the islands (paras. 323-368)

The major islands in the Gulf are indicated on sketch-map G annexed. El Salvador asks the Chamber to declare that it has sovereignty over all the islands within the Gulf except Zacate Grande and the Farallones; Honduras asks it to declare that only Meanguera and Meanguerita islands are in dispute between the Parties and that Honduras has sovereignty over them.

In the view of the Chamber the provisions of the Special Agreement that it determine "la situación jurídica insular" confers upon it jurisdiction in respect of all the islands of the Gulf. A judicial determination, however, is only required in respect of such islands as are in dispute between the Parties; this excludes, inter alia, the Farallones, which are recognized by both Parties as belonging to Nicaragua.

1/ Excerpted from International Court of Justice communiqué No. 92/22 of 11 September 1992.

2/ Only sketch-map G annexed.

The Chamber considers that prima facie the existence of a dispute over an island can be deduced from the fact of its being the subject of specific and argued claims. Noting that El Salvador has pressed its claim to El Tigre island with arguments in support and Honduras has advanced counter-arguments, though with the object of showing that there is no dispute over El Tigre, the Chamber considers that, either since 1985 or at least since the issue was joined in these proceedings, the islands in dispute are El Tigre, Meanguera and Meanguerita.

Honduras contends however that, since the 1980 General Treaty of Peace uses the same terms as article 2, paragraph 2, of the Special Agreement, the jurisdiction of the Chamber must be limited to the islands in dispute at the time the Treaty was concluded, i.e., Meanguera and Meanguerita, the Salvadorian claim to El Tigre having been made only in 1985. The Chamber however observes that the question whether a given island is in dispute is relevant, not to the question of existence of jurisdiction, but to that of its exercise. Honduras also claims that there is no real dispute over El Tigre, which has since 1854 been recognized by El Salvador as belonging to Honduras, but that El Salvador has made a belated claim to it as a political or racial move. The Chamber notes that for it to find that there is no dispute would require it first to determine that El Salvador's claim is wholly unfounded, and to do so can hardly be viewed as anything but the determination of a dispute. The Chamber therefore concludes that it should determine whether Honduras or El Salvador has jurisdiction over each of the islands of El Tigre, Meanguera and Meanguerita.

Honduras contends that by virtue of article 26 of the General Treaty of Peace the law applicable to the dispute is solely the uti possidetis juris of 1821, while El Salvador maintains that the Chamber has to apply the modern law on acquisition of territory and look at the effective exercise or display of State sovereignty over the islands as well as historical titles.

The Chamber has no doubt that the determination of sovereignty over the islands must start with the uti possidetis juris. In 1821, none of the islands of the Gulf, which had been under the sovereignty of the Spanish Crown, were terra nullius. Sovereignty over them could therefore not be acquired by occupation and the matter was thus one of the succession of the newly independent States to the islands. The Chamber will therefore consider whether the appurtenance in 1821 of each disputed island to one or the other of the various administrative units of the Spanish colonial structure can be established, regard being had not only to legislative and administrative texts of the colonial period, but also to "colonial effectivités". The Chamber observes that in the case of the islands the legal and administrative texts are confused and conflicting, and that it is possible that Spanish colonial law gave no clear and definite answer as to the appurtenance of some areas. It therefore considers it particularly appropriate to examine the conduct of the new States during the period immediately after 1821. Claims then made, and the reaction - or lack of reaction - to them may throw light on the contemporary appreciation of what the situation in 1821 had been or should be taken to have been.

The Chamber notes that El Salvador claims all the islands in the Gulf (except Zacate Grande) on the basis that during the colonial period they were within the jurisdiction of the township of San Miguel in the colonial province of San Salvador, which was in turn within the jurisdiction of the Real Audiencia of Guatemala. Honduras asserts that the islands formed part of the bishopric and province of Honduras, that the Spanish Crown had attributed Meanguera and Meanguerita to that province and that ecclesiastical jurisdiction over the islands appertained to the parish of Holuteca and the Guardanía of Nacaome, assigned to the bishopric of Comayagua. Honduras has also presented an array of incidents and events by way of colonial effectivités.

The fact that the ecclesiastical jurisdiction has been relied on as evidence of "colonial effectivités" presents difficulties, as the presence of the Church on the islands, which were sparsely populated, was not permanent.

The Chamber's task is made more difficult by the fact that many of the historical events relied on can be, and have been, interpreted in different ways and thus used to support the arguments of either Party.

The Chamber considers it unnecessary to analyse in further detail the arguments each Party advances to show that it acquired sovereignty over some or all of the islands by the application of the uti possidetis juris principle, the material available being too fragmentary and ambiguous to admit of any firm conclusion. The Chamber must therefore consider the post-independence conduct of the Parties, as indicative of what must have been the 1821 position. This may be supplemented by considerations independent of the uti possidetis juris principle, in particular the possible significance of the conduct of the Parties as constituting acquiescence. The Chamber also notes that under article 26 of the General Treaty of Peace, it may consider all "other evidence and arguments of a legal, historical, human or other kind, brought before it by the Parties and admitted under international law".

The law of acquisition of territory, invoked by El Salvador, is in principle clearly established and buttressed by arbitral and judicial decisions. The difficulty with its application here is that it was developed primarily to deal with the acquisition of sovereignty over terra nullius. Both Parties however assert a title of succession from the Spanish Crown, so that the question arises whether the exercise or display of sovereignty by the one Party, particularly when coupled with the lack of protest by the other, could indicate the presence of an uti possidetis juris title in the former Party, where the evidence based on titles or colonial effectivités is ambiguous. The Chamber notes that in the Minquiers and Ecrehous case in 1953 the Court did not simply disregard the ancient titles and decide on the basis of more recent displays of sovereignty.

In the view of the Chamber, where the relevant administrative boundary in the colonial period was ill-defined or its position disputed, the behaviour of the two States in the years following independence may serve as a guide to where the boundary was, either in their shared view, or in the view acted on by one and acquiesced in by the other.

Being uninhabited or sparsely inhabited, the islands did not arouse any interest or dispute until the years nearing the mid-nineteenth century. What then occurred appears to be highly material. The islands were not terra nullius and in legal theory each island already appertained to one of the Gulf States as heir to the appropriate part of the Spanish colonial possession, which precluded acquisition by occupation; but effective possession by one of the States of an island could constitute a post-colonial effectivité, throwing light on the contemporary appreciation of the legal situation. Possession backed by the exercise of sovereignty may confirm the uti possidetis juris title. The Chamber does not find it necessary to decide whether such possession could be recognized even in contradiction of such a title, but in the case of the islands, where the historical material of colonial times is confused and contradictory and independence was not immediately followed by unambiguous acts of sovereignty, this is practically the only way in which the uti possidetis juris could find formal expression.

The Chamber deals first with El Tigre, and reviews the historical events concerning it from 1833 onward. Noting that Honduras has remained in effective occupation of the island since 1849, the Chamber concludes that the conduct of the Parties in the years following the dissolution of the Federal Republic of Central America was consistent with the assumption that El Tigre appertained to Honduras. Given the attachment of the Central American States

to the principle of uti possidetis juris, the Chamber considers that contemporary assumption also implied belief that Honduras was entitled to the island by succession from Spain, or, at least, that such succession by Honduras was not contradicted by any known colonial title. Although Honduras has not formally requested a finding of its sovereignty over El Tigre, the Chamber considers that it should define its legal situation by holding that sovereignty over El Tigre belongs to Honduras.

Regarding Meanguera and Meanguerita, the Chamber observes that throughout the argument the two islands were treated by both Parties as constituting a single insular unity. The smallness of Meanguerita, its contiguity to the larger island and the fact that it is uninhabited allow its characterization as a "dependency" of Meanguera. That Meanguerita is "capable of appropriation" is undoubted: although without fresh water, it is not a low-tide elevation and is covered by vegetation. The Parties have treated it as capable of appropriation, since they claim sovereignty over it.

The Chamber notes that the initial formal manifestation of the dispute occurred in 1854, when a circular letter made widely known El Salvador's claim to the island. Furthermore, in 1856 and 1879 El Salvador's official journal carried reports concerning administrative acts relating to it. The Chamber has seen no record of reactions or protest by Honduras over these publications.

The Chamber observes that from the late nineteenth century the presence of El Salvador on Meanguera intensified, still without objection or protest from Honduras, and that it has received considerable documentary evidence on the administration of Meanguera by El Salvador. Throughout the period covered by that documentation there is no record of any protest by Honduras, with the exception of one recent event, described later. Furthermore, El Salvador called a witness, a Salvadorian resident of the island, and his testimony, not challenged by Honduras, shows that El Salvador has exercised State power over Meanguera.

According to the material before the Chamber, it was only in January 1991 that the Government of Honduras made protests to the Government of El Salvador concerning Meanguera, which were rejected by the latter Government. The Chamber considers that the Honduran protest was made too late to affect the presumption of acquiescence on the part of Honduras. The conduct of Honduras vis-à-vis earlier effectivités reveals some form of tacit consent to the situation.

The Chamber's conclusion is thus the following. In relation to the islands, the "documents which were issued by the Spanish Crown or by any other Spanish authority, whether secular or ecclesiastical", do not appear sufficient to "indicate the jurisdictions or limits of territories or settlements" in terms of article 26 of that Treaty, so that no firm conclusion can be based upon such material, taken in isolation, for deciding between the two claims to an uti possidetis juris by the Parties, in the years following independence, as throwing light on the application of the principle, and the evidence of effective possession and control of an island by one Party without protest by the other, as pointing to acquiescence. The evidence as to possession and control, and the display and exercise of sovereignty, by Honduras over El Tigre and by El Salvador over Meanguera (to which Meanguerita is an appendage), coupled in each case with the attitude of the other Party, clearly shows that Honduras was treated as having succeeded to Spanish sovereignty over El Tigre, and El Salvador to Spanish sovereignty over Meanguera and Meanguerita.

XI. Legal situation of the maritime spaces (paras. 369-420)

The Chamber first recalls that Nicaragua had been authorized to intervene in the proceedings, but solely on the question of the legal regime of the waters of the Gulf of Fonseca. Referring to complaints by the Parties that Nicaragua had dealt with matters beyond the limits of its permitted intervention, the Chamber observes that it has taken account of Nicaragua's arguments only where they appear relevant in its consideration of the regime of the waters of the Gulf of Fonseca.

The Chamber then refers to the disagreement between the Parties on whether article 2, paragraph 2, of the Special Agreement empowers or requires the Chamber to delimit a maritime boundary, within or without the Gulf. El Salvador maintains that "the Chamber has no jurisdiction to effect any delimitation of the maritime spaces", whereas Honduras seeks the delimitation of the maritime boundary inside and outside the Gulf. The Chamber notes that these contentions have to be seen in relation to the position of the Parties as to the legal status of the Gulf waters: El Salvador claims that they are subject to a condominium in favour of the three coastal States and that delimitation would therefore be inappropriate, whereas Honduras argues that within the Gulf there is a community of interests which necessitates a judicial delimitation.

In application of the normal rules of treaty interpretation (article 31 of the Vienna Convention on the Law of Treaties), the Chamber first considers what is the "ordinary meaning" of the terms of the Special Agreement. It concludes that no indication of a common intention to obtain a delimitation from the Chamber can be derived from the text as it stands. Turning to the context, the Chamber observes that the Special Agreement used the wording "to delimit the boundary line" regarding the land frontier, while confining the task of the Chamber as it relates to the islands and maritime spaces to "determine [their] legal situation", the same contrast of wording being observed in article 18, paragraph 2, of the General Treaty of Peace. Noting that Honduras itself recognizes that the island dispute is not a conflict of delimitation but of attribution of sovereignty over a detached territory, the Chamber observes that it is difficult to accept that the wording "to determine the legal situation", used for both the islands and the maritime spaces, would have a completely different meaning regarding the islands and regarding maritime spaces.

Invoking the principle of effectiveness, Honduras argues that the context of the Treaty and the Special Agreement militates against the Parties having intended merely a determination of the legal situation of the spaces unaccompanied by delimitation, the object and purpose of the Special Agreement being to dispose completely of a long-standing corpus of disputes. In the Chamber's view, however, in interpreting a text of this kind, regard must be had to common intention as it is expressed. In effect, what Honduras is proposing is recourse to the "circumstances" of the conclusion of the Special Agreement, which constitute no more than a supplementary means of interpretation.

To explain the absence of any specific reference to delimitation in the Special Agreement, Honduras points to a provision in the Constitution of El Salvador such that its representatives could never have intended to sign a special agreement contemplating any delimitation of the waters of the Gulf. Honduras contends that it was for this reason that the expression "determine the legal situation" was chosen, intended as a neutral term which would not prejudice the position of either Party. The Chamber is unable to accept this contention, which amounts to a recognition that the Parties were unable to agree that the Chamber should have jurisdiction to delimit the waters of the Gulf. It concludes that the agreement between the Parties, expressed in article 2, paragraph 2, of the Special Agreement, that the Chamber should

determine the legal situation of the maritime spaces did not extend to their delimitation.

Relying on the fact that the expression "determine the legal situation of the island and the maritime spaces" is also used in article 18 of the General Treaty of Peace of 1980, defining the role of the Joint Frontier Commission, Honduras invokes the subsequent practice of the Parties in the application of the Treaty and invites the Chamber to take into account the fact that the Joint Frontier Commission examined proposals aimed at such delimitation. The Chamber considers that, while both customary law and the Vienna Convention on the Law of Treaties (art. 31, para. 3 (b)) allow such practice to be taken into account for purposes of interpretation, none of the considerations raised by Honduras can prevail over the absence from the text of any specific reference to delimitation.

The Chamber then turns to the legal situation of the waters of the Gulf, which falls to be determined by the application of "the rules of international law applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace", as provided in articles 2 and 5 of the Special Agreement.

Following a description of the geographical characteristics of the Gulf, the coastline of which is divided between El Salvador, Honduras and Nicaragua (see sketch-map G annexed) and the conditions of navigation within it, the Chamber points out that the dimensions and proportions of the Gulf are such that it would nowadays be a juridical bay under the provisions (which might be found to express general customary law) of the Convention on the Territorial Sea and the Contiguous Zone (1958) and the United Nations Convention on the Law of the Sea (1982), the consequence being that, if it were a single-State bay, a closing line might now be drawn and the waters be thereby enclosed and "considered as internal waters". The Parties, the intervening State, as well as commentators generally, are agreed that the Gulf is an historic bay, and that its waters are accordingly historic waters. Such waters were defined in the Fisheries case between the United Kingdom of Great Britain and Northern Ireland and Norway as "waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title" (I.C.J. Reports 1951, p. 130). This should be read in the light of the observation in the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) case, that:

> "general international law ... does not provide for a single 'regime' for 'historic bays', but only for a particular regime for each of the concrete, recognized cases of 'historic waters' or 'historic bays'" (I.C.J. Reports 1982, p. 74).

The Court concludes that it is clearly necessary to investigate the particular history of the Gulf to discover the "regime" resulting therefrom, adding that the particular historical regime established by practice must be especially important in a pluri-State bay, a kind of bay for which there are notoriously no agreed and codified general rules of the kind so well established for single-State bays.

Since its discovery in 1522 until 1821, the Gulf was a single-State bay the waters of which were under the single sway of the Spanish Crown. The rights in the Gulf of the present coastal States were thus acquired, like their land territories, by succession from Spain. The Chamber must therefore enquire into the legal situation of the waters of the Gulf in 1821; for the principle of uti possidetis juris should apply to those waters as well as to the land.

The legal status of the Gulf waters after 1821 was a question which faced the Central American Court of Justice in the case between El Salvador

and Nicaragua concerning the Gulf in which it rendered its Judgement of 9 March 1917. That Judgement, which examined the particular regime of the Gulf of Fonseca, must therefore be taken into consideration as an important part of the Gulf's history. The case before the Central American Court was brought by El Salvador against Nicaragua because of the latter's entry into the Bryan-Chamorro Treaty of 1914 with the United States, by which Nicaragua granted the latter a concession for the construction of an interoceanic canal and of a naval base in the Gulf, an arrangement that would allegedly prejudice El Salvador's own rights in the Gulf.

On the underlying question of the status of the waters of the Gulf there were three matters which practice and the 1917 Judgement took account of: first, the practice of all three coastal States had established and mutually recognized a 1-marine-league (3 nautical miles) littoral maritime belt off their respective mainland coasts and islands, in which belt they each exercised an exclusive jurisdiction and sovereignty, though with rights of innocent passage conceded on a mutual basis; secondly, all three States recognized a further belt of 3 marine leagues (9 nautical miles) for rights of "maritime inspection" for fiscal purposes and for national security; thirdly, there was an Agreement of 1900 between Honduras and Nicaragua by which a partial maritime boundary between the two States had been delimited, which, however, stopped well short of the waters of the main entrance to the bay.

Furthermore, the Central American Court unanimously held that the Gulf "is an historic bay possessed of the characteristics of a closed sea" and that " ... the parties are agreed that the Gulf is a closed sea ..."; by "closed sea" the Court seems to mean simply that it is not part of the high seas and its waters are not international waters. At another point the Judgement describes the Gulf as "an historic or vital bay".

The Chamber then points out that the term "territorial waters" used in the Judgement did not then necessarily indicate what would now be called "territorial sea"; and explains what might appear to be an inconsistency in the Judgement concerning rights of "innocent use", which are at odds with the present general understanding of the legal status of the waters of a bay as constituting "internal waters". The Chamber observes that the rules and principles normally applicable to single-State bays are not necessarily appropriate to a bay which is a pluri-State bay and also an historic one. Moreover, there is a need for shipping to have access to any of the three coastal States through the main channels between the bay and the ocean. Rights of innocent passage are not inconsistent with a regime of historic waters. There is furthermore the practical point that since these waters were outside the 3-mile maritime belt of exclusive jurisdiction in which innocent passage was nevertheless recognized in practice, it would have been absurd not to recognize passage rights in these waters, which have to be crossed in order to reach those maritime belts.

All three coastal States continue to claim that the Gulf is an historic bay with the character of a closed sea, and it seems also to continue to be the subject of that "acquiescence on the part of other nations" to which the 1917 Judgement refers; moreover, that position has been generally accepted by commentators. The problem is the precise character of the sovereignty the three coastal States enjoy in these historic waters. Recalling the former view that in a pluri-State bay, if it is not historic waters, the territorial sea follows the sinuosities of the coast and the remainder of the waters of the bay are part of the high seas, the Chamber notes that this solution is not possible in the case of the Gulf of Fonseca since it is an historic bay and therefore a "closed sea".

The Chamber then quotes the holding by the Central American Court that " ... the legal status of the Gulf of Fonseca ... is that of property belonging to the three countries that surround it ..." and that " ... the High

Parties are agreed that the waters which form the entrance to the Gulf intermingle ...". In addition, the Judgement recognized that maritime belts of 1 marine league from the coast were within the exclusive jurisdiction of the coastal State and therefore should "be excepted from the community of interests of ownership". After quoting the paragraphs of the Judgement setting forth the Court's general conclusions, the Chamber observes that the essence of its decision on the legal status of the waters of the Gulf was that these historic waters were then subject to a "co-ownership" (condominium) of the three coastal States.

The Chamber notes that El Salvador approves strongly of the condominium concept, and holds that this status not only prevails but also cannot be changed without its consent. Honduras opposes the condominium idea and accordingly calls in to question the correctness of this part of the 1917 Judgment, whilst also relying on the fact that it was not a party to the case and so cannot be bound by the decision. Nicaragua is, and has consistently been, opposed to the condominium solution.

Honduras also argues against the condominium on the ground that condominia can only be established by agreement. It is doubtless right in claiming that condominia, in the sense of arrangements for the common government of territory, have ordinarily been created by treaty. But what the Central American Court had in mind was a joint sovereignty arising as a juridical consequence of the 1821 succession. State succession is one of the ways in which territorial sovereignty passes from one State to another, and there seems no reason in principle why a succession should not create a joint sovereignty where a single and undivided maritime area passes to two or more new States. The Chamber thus sees the 1917 Judgement as using the term condominium to describe what it regards as the joint inheritance by three States of waters which had belonged to a single State and in which there were no maritime administrative boundaries in 1821 or indeed at the end of the Federal Republic of Central America in 1839.

Thus the ration decidendi of the Judgement appears to be that there was, at the time of independence, no delimitation between the three countries; and the waters of the Gulf have remained undivided and in a state of community which entails a condominium or co-ownership. Further, the existence of a community was evidenced by continued and peaceful use of the waters by all the riparian States after independence.

As regards the status of the 1917 Judgement, the Chamber observes that although the Court's jurisdiction was contested by Nicaragua, which also protested the Judgement, it is nevertheless a valid decision of a competent court. Honduras, which, on learning of the proceedings before the Court, formally protested to El Salvador that it did not recognize the status of co-ownership in the waters of the Gulf, has, in the present case, relied on the principle that a decision in a judgment or an arbitral award can only be opposed to the parties. Nicaragua, a party to the 1917 case, is an intervener but not a Party in the present one. It therefore does not appear that the Chamber is required to pronounce upon the question whether the 1917 Judgement is res judicata between the States parties to it, only one of which is Party to the present proceedings, a question which is not helpful in a case raising a question of the joint ownership of three coastal States. The Chamber must make up its own mind on the status of the waters of the Gulf, taking such account of the 1917 decision as it appears to the Chamber to merit.

The opinion of the Chamber on the regime of the historic waters of the Gulf parallels the opinion expressed in the 1917 Judgement. The Chamber finds that, reserving the question of the 1900 Honduras/Nicaragua delimitation, the Gulf waters, other than the 3-mile maritime belt, are historic waters and subject to a joint sovereignty of the three coastal States, basing itself on the following reasons. As to the historic character of the Gulf waters, there

are the consistent claims of the three coastal States and the absence of protest from other States. As to the character of rights in the waters of the Gulf, these were waters of a single State bay during the greater part of their known history and were not divided or apportioned between the different administrative units which became the three coastal States. There was no attempt to divide and delimit the waters according to the principle of uti possidetis juris, this being a fundamental difference between the land areas and the maritime area. The delimitation effected between Nicaragua and Honduras in 1900, which was substantially an application of the method of equidistance, gives no clue that it was in any way inspired by the application of the uti possidetis juris. A joint succession of the three States to the maritime area therefore seems to be the logical outcome of the principle of uti possidetis juris itself.

The Chamber notes that Honduras, whilst arguing against the condominium, does not consider it sufficient simply to reject it, but proposes an alternative idea, that of "community of interests" or of "interest". That there is a community of interests of the three coastal States of the Gulf is not open to doubt, but it seems odd to postulate such a community as an argument against a condominium, which is almost an ideal embodiment of the community of interests requirements of equality of user, common legal rights and the "exclusion of any preferential privilege". The essential feature of the "community of interests" existing, according to Honduras, in respect of the waters of the Gulf, and which distinguishes it from the condominio referred to by the Central American Court or the condominium asserted by El Salvador, is that the "community of interests" does not merely permit of a delimitation but necessitates it.

El Salvador for its part is not suggesting that the waters subject to joint sovereignty cannot be divided, if there is agreement to do so. What it maintains is that a decision on the status of the waters is an essential prerequisite to the process of delimitation. Moreover, the geographical situation of the Gulf is such that mere delimitation without agreement on questions of passage and access would leave many practical problems unsolved.

The Chamber notes that the normal geographical closing line of the bay would be the line Punta Amapala to Punta Cosigüina; it rejects a thesis elaborated by El Salvador of an "inner gulf" and an "outer gulf", based on a reference in the 1917 Judgement to an inner closing line, there being nothing in that Judgement to support the suggestion that Honduran legal interests in the Gulf waters were limited to the area inside the inner line. Recalling that there had been considerable argument between the Parties about whether the closing line of the Gulf was also a baseline, the Chamber accepts the definition of it as the ocean limit of the Gulf, which however must be the baseline for whatever regime lies beyond it, which must be different from that of the Gulf.

As to the legal status of the waters inside the Gulf closing line other than the 3-mile maritime belts, the Chamber considers whether or not they are "internal waters"; noting that rights of passage through them must be available to vessels of third States seeking access to a port in any of the three coastal States, it observes that it might be sensible to regard those waters, in so far as they are the subject of the condominium or co-ownership, as sui generis. The essential juridical status of these waters is however the same as that of internal waters, since they are claimed à titre de souverain and are not territorial sea.

With regard to the 1900 Honduran/Nicaraguan delimitation line, the Chamber finds, from the conduct of El Salvador, that the existence of the delimitation has been accepted by it in the terms indicated in the 1917 Judgement.

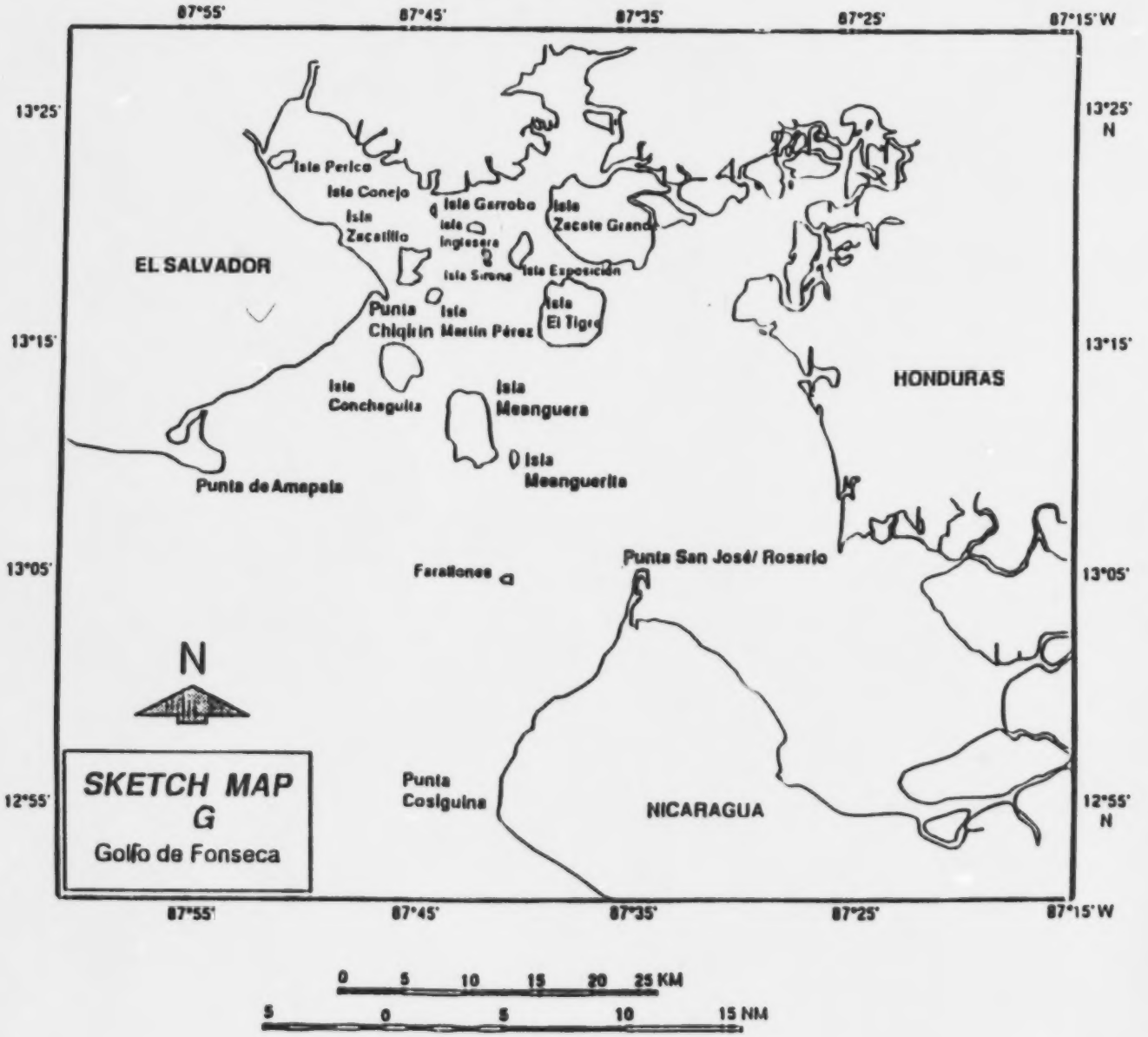
In connection with any delimitation of the waters of the Gulf, the Chamber finds that the existence of joint sovereignty in all the waters subject to a condominium other than those subject to the treaty or customary delimitations means that Honduras has existing legal rights (not merely an interest) in the Gulf waters up to the bay closing line, subject of course to the equivalent rights of El Salvador and Nicaragua.

Regarding the question of the waters outside the Gulf, the Chamber observes that it involves entirely new concepts of law unthought-of in 1917, in particular continental shelf and the exclusive economic zone. There is also a prior question about territorial sea. The littoral maritime belts of 1 marine league along the coastlines of the Gulf are not truly territorial sea in the sense of the modern law of the sea. For a territorial sea normally has beyond it the continental shelf, and either waters of the high seas or an exclusive economic zone and the maritime belts within the Gulf do not have outside them any of these areas. The maritime belts may properly be regarded as the internal waters of the coastal State, even though subject, as indeed are all the waters of the Gulf, to rights of innocent passage.

The Chamber therefore finds that there is a territorial sea proper seawards of the closing line of the Gulf and, since there is a condominium of the waters of the Gulf, there is a tripartite presence at the closing line and Honduras is not locked out from rights in respect of the ocean waters outside the bay. It is only seaward of the closing line that modern territorial seas can exist, since otherwise the Gulf waters could not be waters of an historic bay, which the Parties and the intervening State agree to be the legal position. And if the waters internal to that bay are subject to a threefold joint sovereignty, it is the <u>three</u> coastal States that are entitled to territorial sea outside the bay.

As for the legal regime of the waters, seabed and subsoil off the closing line of the Gulf, the Chamber first observes that the problem must be confined to the area off the baseline but excluding a 3-mile, or 1-marine-league, strip of it at either extremity, corresponding to the existing maritime belts of El Salvador and Nicaragua respectively. At the time of the Central American Court's decision the waters outside the remainder of the baseline were high seas. Nevertheless the modern law of the sea has added territorial sea extending from the baseline, has recognized continental shelf as extending beyond the territorial sea and belonging <u>ipso jure</u> to the coastal State, and confers a right on the coastal State to claim an exclusive economic zone extending up to 200 miles from the baseline of the territorial sea.

Since the legal situation on the landward side of the closing line is one of joint sovereignty, it follows that all three of the joint sovereigns must be entitled outside the closing line to territorial sea, continental shelf and exclusive economic zone. Whether this situation should remain in being or be replaced by a division and delimitation into three separate zones is, as inside the Gulf also, a matter for the three States to decide. Any such delimitation of maritime areas will fall to be effected by agreement on the basis of international law.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Isla Zacate Grande
Isla Exposición
Isla El Tigre
EL SALVADOR
Punta Chiquirin
Isla Martín Pérez
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C. Case concerning Passage through the Great Belt (Finland v. Denmark) 1/

Discontinuance

The following information is communicated to the press by the Registry of the International Court of Justice:

In the Order of 29 July 1991, by which the Court adjudicated upon a request by Finland for the indication of provisional measures in the above case (cf. Press Communiqué 91/24, of that same date), the Court declared inter alia that "pending a decision of the Court on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement is to be welcomed".

By a letter dated 3 September 1992 the Agent of Finland, referring to the passage quoted above, stated that a settlement of the dispute had been attained and accordingly notified the Court of the discontinuance of the case by Finland.

By a letter dated 4 September 1992 the Agent of Denmark, to whom a copy of the letter from the Agent of Finland had been communicated, stated that Denmark had no objection to the discontinuance.

Consequently, the President of the Court, on 10 September 1992, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list.

1/ International Court of Justice communiqué No. 92/23 of 11 September 1992.